

M e m o r a n d u m**425.0227**To: ---

Date: July 9, 1969

From: John L. Waid
Tax Counsel

Subject: ---

Senior Tax Counsel Mary C. Armstrong has requested that I answer your recent memorandum to her on the above taxpayer. You have requested our advice as to whether or not sales of "bubble humidifiers" are exempt from tax when sold to hospitals.

You indicated that the taxpayer, ---, filed a claim for refund with respect to sales of exempt medicines to various hospitals who were represented by ---. You indicated that most of the items have been resolved, but there still remains a controversy regarding a bubble humidifier sold to --- hospital. You said that --- indicated that we had previously determined that sales of this product were exempt, per correspondence with Mrs. Armstrong.

You attached to your memorandum various documents. Two appear to be excerpts from medical supply catalogues. One describes a "bubble humidifier" as a "Humidifier adapter with safety alarm pressure release and . . . bottle of sterile water, all in unitized package." The other describes its pre-filled humidifier as coming in two sizes for different needs; having self-cutting caps on wide-mouth bottle; flowmeter nuts to resist cross-threading; a diffuser to create high humidity output for maximum patient comfort; a baffling system to cause large particle drain-back into the reservoir, reducing rain out in oxygen tubing; and a brass poppet pressure relief system. You also sent a copy of an invoice showing that these items are sold for a single price.

As a general rule, items used to diagnose a condition or to apply medicine or treatment to the patient are not considered to be medicines. However, where "medicine" applicators are sold with the medicine inside, such as pre-filled disposable syringes or pre-filled disposable skin staplers, we have considered sales of those items to be exempt from tax, not as sales of medicine under Regulation 1591, but as sales of containers sold with contents whose sales price is not required to be included within the measure of sales or use tax. (Reg. 1589(b)(1)(C).)

I have been unable to locate correspondence with --- on this matter, but Mrs. Armstrong has discussed the issue of taxation of sales of bubble humidifier kits with several persons. Sterile water qualifies as a "medicine" under Regulation 1591(b)(1). Humidification kits which are composed of a container of sterile water for irrigation, USP, and a humidifier cap and are sold for a single price are exempt from tax. The

exemption is based on the fact that the bottle and cap are items which are used to contain and apply medicine and the entire kit is sold for a single price.

The documents you enclosed indicate that the kits in question are composed of pre-filled bottles and caps and are sold together for a single price. We thus conclude that sales of these bubble humidifiers are exempt from tax as sales of containers the sale of the contents of which are exempt from tax under the above authority.

JLW:es